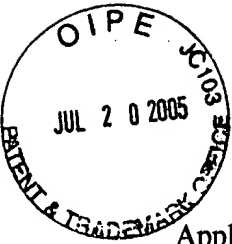


07-21-05

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Patent  
Attorney Docket 4346B



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Anthony G. Matous	)	
	Bruce A. Moser	)	
		)	
Application No.	09/875,750	)	Taylor, Nicholas R.
		)	Patent Examiner
		)	Art Unit 2141
Filed:	June 6, 2001	)	
		)	
For:	Method and Apparatus Providing	)	
	Electronic Concurrent Delivery of	)	
	Multimedia Content to General	)	
	Purpose Computers Over a	)	
	Computer Network	)	
		)	
			Pittsburgh, Pennsylvania

**APPLICANTS' BRIEF ON APPEAL**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Brief on Appeal is submitted under part 41 of Title 35 U.S.C. 134(a) and (b) in accordance with the provisions of 37 CFR 1.191, together with the required fee of \$250.00 for a small entity in the form of a check.

**REAL PARTY IN INTEREST**

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The real party of interest is National Center for the Profession of Teaching, Assignee of Record, a Pennsylvania Corporation having its principal place of business at 175 Cornell Road, Suite

16, Blairsville, PA 15717. Through name change, National Center for the Profession of Teaching is now known as Learning Sciences International.

### **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences with regard to this patent application.

### **STATUS OF THE CLAIMS**

Claims 1 through 7 were originally filed with the application and by amendment original claims 1 through 7 were canceled and substituted with new claims 8 through 11. New claims 8 through 11 are the claims finally rejected and the claims now being appealed.

### **STATUS OF AMENDMENTS**

Arguments were submitted after final rejection but no amendments were filed subsequent to final rejection.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 8 claims a method of providing electronic concurrent delivery of multimedia content to general purpose computers over a computer network. Independent claim 10

is an apparatus counterpart to method claim 10 which claims the apparatus for providing electronic concurrent delivery of multimedia content to general purpose computers over a computer network. Accordingly, since apparatus claim 10 is an exact reflection of method claim 8, a summary of the claimed subject matter of independent claims 8 and 10 will be given simultaneously.

A host computer 11 (FIG. 1) having web server capabilities is coupled to a computer network 13. Host computer 11 also has a storage medium storing a database of multimedia experiences. The host computer 11 is further provided with a delivery system for managing the delivery of multimedia content from the host database for experiencing by a participant on a computer display device of a general user computer 12.

General purpose computers 12 are coupled through the computer network 13 to the host computer 11 for downloading the delivery system over the computer network for managing the delivery of selected of the multimedia experiences from the host database to a general purpose computer 12 for display on a computer display device, which is part of the computer 12.

The delivery system for the host computer 11 is programmed for loading additional multimedia experiences from the host database into memory of the general purpose computers 12 for subsequent experiencing while the participants using the computers 12 are presently experiencing selected multimedia content from the host database for thereby providing seamless multimedia content display. A more detailed description of these features is provided in the specification beginning at line 12 of page 8 and continuing through line 9 of page 11. The multimedia experiences

which are being stored in the storage medium of the host computer 11 are stored in the form of movie clips which have and are controlled through the use of a timeline and a play head and each timeline is subdivided into frames and each frame is broken down into a number of seconds. Only one play head is provided for each movie clip, and each play head is permitted to be on for only one instant of the timeline at any given moment whereby the play head moves forward based on the passing of time associated with each frame. This accordingly allows independent parts of the delivery shell to run concurrently with each other and share processor time slices. This feature is explained in more detail beginning at line 10 of page 11 through line 9 of page 14.

Finally, the movie clips are provided with a programming language allowing the movie clip to control the flow of animation. This feature is explained in more detail beginning at line 10 of page 14 of the specification through line 6 of page 17.

#### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

There are two grounds of rejection presented for review. These are the rejection of independent claims 8 and 10, and the rejection of dependent claims 9 and 11 under 35 U.S.C. 103(a) as being unpatentable over Facq et al. and Geibler ("Surfing the Movie Space"), further in view of Janser ("An Interactive Learning System").

## ARGUMENT

Claims 8 and 10 were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Facq et al. and Geibler, and further in view of Janser.

A combination of references is permitted to render obvious only that which they fairly teach to one of ordinary skill in the art. See *In re: Free*, 141 USPQ 238, 329 F.2d 998, (CCPA 1964). With this in mind, we need to examine exactly what the combination disclosures of these references fairly teach to one of ordinary skill in the art without the use of hindsight.

The Examiner states “It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have combined Facq - Geibler and Janser to provide the programmable language of Janser in the system of Facq - Geibler, because doing so would enable strong support of interaction with a learner in the system of Facq - Geibler (Janser, Section 2.3, second bulleted point).” However, it is respectfully submitted that the Examiner has hypothesized such a system which does not in fact exist in the prior art through the improper use of hindsight.

Facq makes no mention of a movie media type, but rather specifically refers to image and text media types. There is no intention indicated in Facq that “multiple media” was meant to extend to much more complicated media types such as video and animation, not to mention interaction. In particular, Facq teaches a multiple media viewing system wherein there is a first channel for transferring the image items of the medium content, a second channel for transferring the textual

items of the media content, and a third channel for transferring dimensions of the image items. See for example claim 20 of Facq. This verifies that Facq had no intention to indicate that “multiple media” was meant to extend to much more complicated media types like video and animation or interaction.

The Examiner further asserts in paragraph 5 of the final rejection that the addition of a movie clip media type equipped with a programming language would have been a desirable addition to Facq because “doing so would enable strong support of interaction with a learner”. However, Facq does not make any reference to a learner, nor does it place any importance on interaction. Therefore, it is respectfully submitted that there is no grounds for the Examiner’s assertion that this addition would have been obvious to Facq., and does not indicate any interest in the advantage of such an addition. Also it is obvious from the foregoing that a combination of what these two references teach is something entirely different from what Applicant specifically claims, when hindsight is not applied.

The “art” indicated by Facq can be described as “computer based entertainment”, not “computer based education”, as Janser describes. It is inappropriate therefore to suppose that such a combination would be obvious to one of ordinary skill in the art, when in fact two different “arts” are being discussed. Also, regarding “obviousness”, it must be recognized that all new creations are necessarily created out of novel combinations of preexisting ideas and objects. All literature is created using existing ideas, words, and letters; all computer programs are created using existing coding structures, programming languages, and ultimately the previously conceived “1” and “0”; all

manufactured objects are created using existing components, materials, and ultimately, atoms. It is respectfully submitted that obviousness cannot be based on the fact that various parts of the proposed system existed previously and that the casual observer of ordinary skill might think that the parts could be easily or “obviously” integrated. The spirit of 35 U.S.C. 103(a) is to prevent repatenting of existing patents with trivial or superficial changes. It is not to quash the patentability of new and novel applications and combinations of existing ideas. The fact that disclosures of references can be combined does not make combination obvious unless the art also contained something to suggest desirability of combination. It is respectfully submitted that the art contains nothing to suggest desirability of the combination made by the Examiner. See *In re: Imperato* 179 USPQ 730 (CCPA 1973). Please also see *In re: Orthopedic Equipment Co., Inc. et al. v. United States*, 217 USPQ 193, 199 (Fed. Cir. 1983), citing also *In re: Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

In the reference made by the Examiner to Janser, it must be observed that Janser does not teach a movie clip with a programming language as maintained by the Examiner. The Janser reference merely indicates the use of Authorware. Authorware, a software package now distributed by Macromedia, creates a media type including animation and a programming language. However, this media type is not a movie clip, and does not have a playhead and a timeline subdivided into frames, which makes it considerably different from the movie clip media type described and claimed in the present application. One could speculate that it would be possible to combine the Java programming language with a VHS tape to produce the movie clip media type described in the present application. However, such a speculation would be the improper application of hindsight

and an assertion that such a combination would be obvious to someone with ordinary skill in the art would be therefore a gross exaggeration.

Next regarding the rejection of dependent claims 9 and 11, in paragraph 6 of the final rejection, the Examiner writes “Facq - Geibler - Janser teaches . . . obtain from host database a set of . . . website addresses associated with the multimedia experience”. However, it is respectfully submitted that the Janser reference does not teach this. The section in Janser indicated by the Examiner speaks of “navigating between related pages”. In context, it is referring to the pages of the lesson, and is not related to website pages.

From the foregoing it can be readily observed by one of ordinary skill in the art that a combination of the teachings of the cited references teaches something entirely different from the claimed combination that Applicant sets forth in claims 8 through 11.

The Examiner states in the reply communication of April 22, 2005 that Facq teaches the use of multimedia extending to complicated types, such as video and animation. However, the actual claims of Facq make no reference to these complicated types, but rather specifically refer to an implementation including only text and images (claims 5, 9-11). This verifies that Facq did not have the intention, or indeed the capability to include these more complicated types.

It is respectfully submitted that the referenced combination suggested by the Examiner provides something quite different to one of ordinary skill in the art than what is claimed by



Applicants. An impartial true reconstruction or combination of the elements disclosed and taught by the references does not suggest the present claimed combination and the references do not suggest desirability of the combination.

The Examiner further disputes Applicants' arguments regarding the Janser reference, giving evidence that Authorware teaches the idea of a "flowline". However, the Examiner's assertion that a "flowline" is synonymous with a "timeline" is erroneous. A timeline is broken down into a number of parts, such that each part, often called a frame, is a specific equal length of time. In the evidence provided by the Examiner, Figure 1 shows an Authorware flowline, with only one part, "Display: Snake Graphic", which would be instantaneous, and another part, "Weight: 2 Seconds", which would clearly take 2 seconds. These two parts do not take equal time, therefore they cannot be frames of a timeline. Therefore a timeline is not synonymous with a flowline.

### **CONCLUSION**

It is respectfully requested that the Board of Appeals withdraw the rejections that stand over claims 8 through 11 and reverse the Examiner.

A Claims Appendix containing a copy of the claims involved in the appeal is attached.

Respectfully submitted,

CAROTHERS AND CAROTHERS

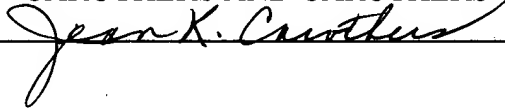


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P.O. Box 1450, Alexandria, VA 22313-1450, on July 19, 2005  
CAROTHERS AND CAROTHERS



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**APPEAL CLAIMS APPENDIX APPLICATION NO. 09/875,750**

8. The method of providing electronic concurrent delivery of multimedia content to general purpose computers over a computer network, comprising:

storing a database of multimedia experiences in a storage medium of a host computer which is coupled to a computer network and has web server capabilities;

providing said host computer with a delivery system for managing the delivery of multimedia content from the host database for experiencing by a participant on a computer display device;

downloading the delivery system over the computer network into memory of a general purpose computer for managing the delivery of selected of said multimedia experiences from said host database to a general purpose computer for display on a computer display device;

loading additional multimedia experiences from said host database into memory of said general purpose computer for subsequent experiencing while the participant is presently experiencing selected multimedia content from the host database for providing seamless multimedia content display;

said multimedia experiences being stored in the storage medium in the form of movie clips which have and are controlled through the use of a timeline and a play head and each timeline is subdivided into frames and each frame is broken down into a number of seconds; the method including:

providing only one play head for each movie clip;

permitting each play head to be on for only one instant of the timeline at any given moment whereby the play head moves forward based on the passing of time associated with each frame and thereby allowing independent parts of the delivery system to run concurrently with each other and share processor time slices; and

providing each movie clip with a programming language allowing the movie clip to control the flow of animation.

9. The method of claim 8, including programming said delivery system to obtain from the host database a set of glossary terms and website addresses associated with the multimedia experiences for download.

10. An apparatus for providing electronic concurrent delivery of multimedia content to general purpose computers over a computer network, comprising:

a host computer having web server capabilities and coupled to a computer network and having a storage medium storing a database of multimedia experiences;

said host computer provided with a delivery system for managing the delivery of multimedia content from the host database for experiencing by a participant on a computer display device;

a general purpose computer coupled through the computer network to the host computer for downloading the delivery system over the computer network for managing the delivery of selected of said multimedia experiences from said host database to a general purpose computer for display on a computer display device;

said delivery system being programmed for loading additional multimedia experiences from said host database into memory of said general purpose computer for subsequent experiencing while the participant is presently experiencing selected multimedia content from the host database for providing seamless multimedia content display;

said multimedia experiences being stored in the storage medium in the form of movie clips which have and are controlled through the use of a timeline and a play head and each timeline is subdivided into frames and each frame is broken down into a number of seconds, only one play head is provided for each movie clip, and each play head is permitted to be on for only one instant of the timeline at any given moment whereby the play head moves forward based on the passing of time associated with each frame and thereby allowing independent parts of the delivery shell to run concurrently with each other and share processor time slices; and

said movie clips provided with a programming language allowing the movie clip to control the flow of animation.

11. The apparatus of claim 10, said delivery system programmed to obtain from the host database a set of glossary terms and website addresses associated with the multimedia experiences for download.